

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRITNI JONES,

Plaintiff,

v.

Case No. 1:20-cv-441

LEGACY BURGERS, LLC d/b/a
BURGER KING, and
DERRICK YOUNG, individually
and as agent of LEGACY BURGERS, LLC
d/b/a/ BURGER KING,

Defendants.

NOTICE OF REMOVAL

Defendant Legacy Burgers, LLC (“Legacy Burgers”) shows the Court as follows:

1. Plaintiff Britni Jones (“Plaintiff”) commenced this action in the First Judicial District Court in and for the County of Santa Fe, State of New Mexico, Civil Action No. D-101-CV-2020-00708, by the filing of her complaint on March 12, 2020. Copies of all pleadings filed in that action are attached hereto as Exhibit A.

2. Plaintiff served the Complaint on Defendant Legacy Burger on April 11, 2020. Plaintiff has not yet served Defendant Derrick Young (“Young”).¹

3. This Notice of Removal is filed in this Court within 30 days of Legacy Burger’s receipt of the initial pleading in the case. See 28 U.S.C. § 1446(b). The state court in which this action was commenced is within this Court’s district. Therefore, this action is properly removed to this Court, pursuant to 28 U.S.C. §§ 1441(a) and 1446.

¹ Plaintiff attempted to serve Young by serving Legacy Burger’s registered agent, Paracorp, and naming Young Legacy Burger’s “agent.” He is not. Young’s employment with Legacy Burger ended in December 2019. Young is currently a resident of the State of Nevada and has no employment or agency relationship with Legacy Burger. Neither Legacy Burger nor Paracorp has any authority to accept service on Young’s behalf. (See Declaration of Derrick Young, attached as Exhibit B.)

Diversity jurisdiction – Diversity of Parties

4. On information and belief, Plaintiff is a citizen of the State of New Mexico.

5. Legacy Burgers is a limited partnership organized in the state of California and with its principal place of business in California. Legacy Burgers's limited partners are all citizens of the state of California. Anthony Josephson Decl., attached as Exhibit C, ¶¶ 3-4. Defendant Derrick Young is a resident of the state of Nevada. Young Decl., ¶ 4.

6. Complete diversity between the parties exists under 28 U.S.C. § 1332.

Diversity jurisdiction – Amount in Controversy

7. As addressed in detail below, in her action against Defendants, Plaintiff seeks compensatory and punitive damages and attorney fees exceeding \$75,000 in sum or value.

8. Plaintiff seeks damages under the common law of New Mexico under theories of breach of contract and prima facie tort. Pursuant to her complaint, Plaintiff seeks "all lawfully recoverable compensatory and punitive damages" and "attorney's fees." (Compl. "Requested For Relief," ¶¶ 1-2.)

9. Plaintiff's employment with Legacy Burgers was terminated in approximately mid-August 2019. Plaintiff's rate of pay at the time was \$10.75 an hour and she routinely worked up to 40 hours a week. Josephson Decl. at ¶ 9. Her annualized pay was therefore approximately \$22,360 (40 hours x 52 weeks x \$10.75).

10. Thus, Plaintiff's claim for back pay from mid-August 2019 through mid-May 2020 (approximately 9 months) is approximately \$16,770. Assuming this case is set for trial one year from the date of this Removal, the back pay claim of Plaintiff would be \$39,130.

11. Plaintiffs in employment actions commonly assert front pay claims for a period three or even more years. Again, using her annualized pay level at the time of her separation

from employment at Legacy Burger, Plaintiff's front pay claim would amount to approximately \$67,080.00. The amount in controversy solely for Plaintiff's lost wages (back pay of \$39,130 and front pay of \$67,080.00, a sum of \$106,210) therefore exceeds \$75,000.

12. "[A]ll compensatory damages allowed by law," as sought here by Plaintiff, include possible damages for emotional distress. *See, e.g., Chavez v. Manville Prods. Corp.*, 1898-NMSC-050, ¶¶ 16, 26, 28, 777 P.2d 371 (compensatory damages include emotional distress damages). It is not uncommon in successful employment termination cases for emotional distress damages to exceed \$50,000. *See Bourgeois v. Horizon Healthcare Corp.*, 1994-NMSC-038, ¶ 2, 117 N.M. 434, 872 P.2d 852 (1994) (jury award of \$63,500 in emotional distress damages on claim of wrongful termination).

13. Plaintiff also seeks punitive damages. Routinely such damage requests are for an amount at least equal to the total compensatory damages amount.

14. Finally, Plaintiff seeks her attorney's fees. It would be unreasonable to assume that Plaintiff's counsel would expend any less than 200 hours preparing and taking the case through trial. At a rate of \$300 an hour, which would not be an unreasonable rate in New Mexico for an experienced employment lawyer such as Plaintiff's, those fees would amount to \$60,000.

15. In total, Plaintiff's claims for back and front pay, emotional distress damages, punitive damages, and attorney's fees are greater than \$200,000 – well in excess of the \$75,000 jurisdictional threshold.

16. Legacy Burgers denies Plaintiff's contentions and denies that Plaintiff is entitled to any damages.

17. Accordingly, this case is a civil action of which the district courts of the United States have original jurisdiction in that the action involves a matter in controversy which exceeds

the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states within the meaning of 28 U.S.C. §§ 1332 and 1441(a).

18. Pursuant to 28 U.S.C. § 1446(d), promptly upon filing this notice, Legacy Burgers will give written notice of the filing thereof to Plaintiff and will file a copy of the notice with the Clerk of the First Judicial District in Santa Fe County, New Mexico, from which this action was removed.

19. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon Legacy Burger in action No. D-101-CV-2020-00708 is attached to this notice as Exhibit A.

20. Defendant Young consents to this removal. *See* Young Declaration, attached as Exhibit B.

WHEREFORE, Defendant hereby removes action No. D-101-CV-2020-00708 from state court into this Court for determination.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: /s/ Thomas L. Stahl

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 8, 2020, I filed the foregoing electronically, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Timothy L. White
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By: /s/ Thomas L. Stahl
Thomas L. Stahl